## APPENDIX A

### Excerpts from The Lanham Act, 15 U.S.C. § 1051 et seq. (1946)

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*Sec. 32(1) (15 U.S.C. 1114(1)). Remedies—Infringement*

Any person who shall, without the consent of the registrant—

(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

(b) reproduce, counterfeit, copy or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive;

shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) hereof, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or deceive (Amended Oct. 9, 1962, 76 Stat. 769).

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*Sec. 34 (15 U.S.C. 1116). Remedies—Injunctions*

The several courts vested with jurisdiction of civil actions arising under this Act shall have power to grant injunctions, according to the principles of equity and upon such

terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent Office. Any such injunction may include a provision directing the defendant to file with the court and serve on the plaintiff within thirty days after the service on the defendant of such injunction, or such extended period as the court may direct, a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction. Any such injunction granted upon hearing, after notice to the defendant, by any district court of the United States, may be served on the parties against whom such injunction is granted anywhere in the United States where they may be found, and shall be operative and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other United States district court in whose jurisdiction the defendant may be found.

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*Sec. 35 (15 U.S.C. 1117). Remedies—Recovery for violation of rights*

When a violation of any right of the registrant of a mark registered in the Patent Office shall have been established in any civil action arising under this Act, the plaintiff shall be entitled, subject to the provisions of sections 29 and 32 and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount

of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty (Amended Oct. 9, 1962, 76 Stat. 769).

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*Sec. 39 (15 U.S.C. 1121). Remedies—Jurisdiction of courts*

The district and territorial courts of the United States shall have original jurisdiction, the circuit courts of appeal of the United States and the United States Court of Appeals for the District of Columbia shall have appellate jurisdiction, of all actions arising under this Act, without regard to the amount in controversy or to diversity or lack of diversity of the citizenship of the parties.

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*Sec. 45 (15 U.S.C. (1127)). Construction and definitions*

In the construction of this Act, unless the contrary is plainly apparent from the context:

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*Related company.* The term "related company" means any person who legitimately controls or is controlled by the registrant or applicant for registration in respect to the nature and quality of the goods or services in connection with which the mark is used.

*Trade name, commercial name.* The terms "trade name" and "commercial name" include individual names and surnames, firm names and trade names used by manufacturers, industrialists, merchants, agriculturists, and others to identify their businesses, vocations, or occupations: the names or titles lawfully adopted and used by persons, firms, associations, corporations, companies, unions, and any manufacturing, industrial, commercial, agricultural, or

other organizations engaged in trade or commerce and capable of suing and being sued in a court of law.

*Trademark.* The term "trademark" includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturers or merchant to identify his goods and distinguish them from those manufactured or sold by others.

*Service mark.* The term "service mark" means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the service of others. Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

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*Mark.* The term "mark" includes any trademark, service mark, collective mark, or certification mark entitled to registration under this Act whether registered or not.

*Use in commerce.* For the purposes of this Act a mark shall be deemed to be used in commerce (a) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and the goods are sold or transported in commerce and (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith.

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*Colorable imitation.* The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive.

*Registered mark.* The term "registered mark" means a mark registered in the United States Patent Office under

this Act or under the Act of March 3, 1881, or the Act of February 20, 1905, or the Act of March 19, 1920. The phrase "marks registered in the Patent Office" means registered marks.

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*Counterfeit.* A "counterfeit" is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.

*Singular and plural.* Words used in the singular include the plural and vice versa.

*Intent of Act.* The intent of this Act is to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks used in such commerce from interference by State, or territorial legislation; to protect persons engaged in such commerce against unfair competition; to prevent fraud and deception in such commerce by the use of reproductions; copies, counterfeits, or colorable imitations of registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trademarks, trade names, and unfair competition entered into between the United States and foreign nations (Amended Oct. 9, 1962, 76 Stat. 769).

## APPENDIX B

### Excerpts from Maryland Code, Art. 23

§ 5. Corporate name.

(a) *Indication of a corporation; not to conflict with charter as to purpose; infringement on name of other corporation.*—The name of the corporation—

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(3) Shall not be the same as the name of any corporation of this State, the name of any corporation registered or qualified to do business in this State, or a name which is at the time reserved or registered in the manner provided in this article, or so similar to any such name as to be misleading.

## APPENDIX C

### Securities and Exchange Commission Releases and Rule

For RELEASE Monday, April 7, 1969

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SECURITIES ACT OF 1933

Release No. 4959

Proposed Guide To Misleading Character Of Certain Registrants' Names

In recent months the Commission's Division of Corporation Finance has observed an increase in the incidences of registrants adopting names which may be misleading. Some registrants have used names which may create a misleading impression as to the nature of their business. For examples, registrants have proposed to use words such as "nuclear", "missile", "space", "nucleonics" or "electronics" in their names where they were not engaged in activitiy normally associated with those words, or only so engaged to a very limited extent.

The Division also may deem a registrants name to be misleading if it is so similar to the name of another company, particularly a well-known and established company, that it is likely to be confused with the name of the other company.

The Commission has authorized publication of this proposed guide in order to bring the views of the Division to the attention of prospective registrants. Comments and suggestions on the proposed guide should be submitted to Charles E. Shreve, Director, Division of Corporation Finance, Securities and Exchange Commission, Washington, D. C. 20549, on or before May 5, 1969, so that the Division may have the benefit of the views of those interested before the guide is published in definitive form. Pending publica-

tion in definitive form, the Division will generally follow the proposed guide as published in the text set forth below.

*54. Misleading Character of Certain Registrants' Names.*

A registrant's name may be materially misleading if it indicates a line of business in which the registrant is not engaged or is engaged only to a limited extent. If the registrant is not engaged to any substantial extent in the business indicated by the name, a change of name may be the only way to cure its misleading character. If the registrant is substantially engaged in the line of business, even though it does not comprise the major portion of the business, it may be sufficient to disclose under the name of the registrant on the cover page of the prospectus the limited extent to which the registrant is engaged in the business indicated by it's name. This paragraph does not apply, however, to an established company which over a period of years has changed the general character of its business and where the investigating public is generally aware of the change and the character of the registrant's present business.

A registrant's name may also be misleading if it is the same or substantially the same as the name of another well-known company. If it appears likely that the registrant's name may be confused with the name of the other company, consideration should be given to changing the name. However, if both companies are new or small and relatively unknown and are located in different parts of the country, so that investors are not likely to mistake one company for the other, it would be sufficient to disclose on the cover page of the prospectus, under the name of the registrant, the lack of any relationship between the two companies.

By the Commission

ORVAL L. DUBOIS
Secretary

For Release Wednesday, September 17, 1969

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

Securities Act of 1933
Release No. 5005

## Adoption of Guide Relating to Misleading Character of Certain Registrants' Names

On April 7, 1969, the Commission published in Securities Act Release No. 4959 a proposed guide of the Division of Corporation Finance relating to the misleading character of the names of certain registrants and invited the views and comments of interested persons thereon. The comments received having been considered by the Division the text of the guide is set forth below in definitive form, unchanged from the language of the proposal.

54. *Misleading Character of Certain Registrants' Names.*

A registrant's name may be materially misleading if it indicates a line of business in which the registrant is not engaged or is engaged only to a limited extent. If the registrant is not engaged to any substantial extent in the business indicated by the name, a change of name may be the only way to cure its misleading character. If the registrant is substantially engaged in the line of business, even though it does not comprise the major portion of the business, it may be sufficient to disclose under the name of the registrant on the cover page of the prospectus the limited extent to which the registrant is engaged in the business indicated by its name. This paragraph does not apply, however, to an established company which over a period of years has changed the general character of its business and where the investing public is generally aware of the change and the character of the registrant's present business.

A registrant's name may also be misleading if it is the same or substantially the same as the name of another well-known company. If it appears likely that the registrant's name may be confused with the name of the other company, consideration should be given to changing the name. However, if both companies are new or small and relatively unknown and are located in different parts of the country, so that investors are not likely to mistake one company for the other, it would be sufficient to disclose on the cover page of the prospectus, under the name of the registrant, the lack of any relationship between the two companies.

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By the Commission.

ORVAL L. DUBOIS
*Secretary*